84-278

Office - Supreme Court, U S
FILED
AUG 20 1984
ALEXANDER L. STEVAS
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JOSEPH H. RIDGE, EUNICE ROSS, RALPH H. SMITH, JR. AND J. WARREN WATSON, PETITIONERS

V.

COMMONWEALTH OF PENNSYLVANIA, STATE EMPLOYEES' RETIREMENT BOARD, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Joseph H. Ridge, Pro Se
Eunice Ross, Pro Se
Ralph H. Smith, Jr., Pro Se
J. Warren Watson, Pro Se
City-County Building
Grant Street
Pittsburgh, PA 15219
(412) 355-5652

28pp

QUESTIONS PRESENTED

I.

Where the Constitution and laws of Pennsylvania expressly grant the right of appeal to the Supreme Court from the Commonwealth Court, did not the Supreme Court of Pennsylvania deny petitioners due process of law in violation of the Fourteenth Amendment when it denied them their right to maintain an appeal from an order which imposed a money judgment against them?

II.

Were not petitioners' rights to due process under the Fourteenth Amendment violated when the Commonwealth Court of Pennsylvania imposed a money judgment upon petitioners without first giving petitioners due and timely notice of the proceeding and without affording petitioners an opportunity to appear and have their objections heard?

III.

Did not the Commonwealth Court deny petitioners due process of law in violation of the Fourteenth Amendment by issuing an injunction restraining the exercise of petitioners' constitutional rights without giving them due and timely notice of either the intent to consider such relief or of the entry of the injunction, and without affording petitioners a hearing and an opportunity to present evidence and argument?

TABLE OF CONTENTS

	Page
Judgments below.	1
Jurisdiction	2
Constitutional provision involved. . . .	3
Statement.	3
Reasons for granting the petition. . . .	13
Conclusion	23
Appendix A	24
Appendix B	24

TABLE OF AUTHORITIES

Cases:

Hewitt v. Helms, 459 U.S. 460 . . .	16
Meachum v. Fano, 427 U.S. 215 . . .	16
Wolff v. McDonnell, 418 U.S. 539. .	16
Goldberg v. Kelly, 397 U.S. 254 . . .	19
Goss v. Lopez, 419 U.S. 565	19

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984
No.
JOSEPH H. RIDGE, ET AL., PETITIONERS
V.
COMMONWEALTH OF PENNSYLVANIA, STATE EMPLOYEES' RETIREMENT BOARD, ET AL.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Joseph H. Ridge, Eunice Ross, Ralph H. Smith, Jr., and J. Warren Watson petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in this case.

JUDGMENTS BELOW

The judgments of the Supreme Court of Pennsylvania (App. A, infra, ____) were not reported nor were any opinions filed.

*The other petitioners in this petition are Eunice Ross, Ralph H. Smith, Jr. and J. Warren Watson. In the McKenna class action in the Commonwealth Court at No. 2626 C.D. 1978, J. Frank McKenna, Jr., and Fredric G. Weir were plaintiffs and plaintiffs' class representatives and The State Employees' Retirement Board, its executive secretary and the state treasurer were defendants. In the Catania class action commenced in the Commonwealth Court at No. 101 C.D. 1981, Francis J. Catania, Edward J. Bradley, John W. Sawyer, Edmund V. Ludwig, Joseph F. O'Kicki, Charles W. Sweet and Paul R. Beckert were the plaintiffs and class representatives and the Commonwealth of Pennsylvania, State Employees' Retirement Board, its secretary and the state treasurer were defendants.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania (App. ____, infra, ____) was entered on May 22, 1984. An application for reconsideration was denied on July 12, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> . . . (N)or shall any State deprive any person of. . ., liberty, or property, without due process of law;. . .

STATEMENT

Petitioners are plaintiff-members of class actions that were commenced to obtain a declaration of their respective rights under the Commonwealth of Pennsylvania's judicial retirement law. Both actions were certified as class actions, the members given an opportunity to opt out and the cases were litigated before the courts. The McKenna case was decided in favor of the class action plaintiffs by the Commonwealth Court (421 A.2d 1236) and affirmed on appeal by the Pennsylvania Supreme Court (433 A.2d 871). The Catania case was decided in part by the Pennsylvania Supreme Court (450 A.2d 1342) and then remanded to the Commonwealth Court where the class action plaintiffs received a favorable decision (455 A.2d 1250).

During the course of the litigation the Commonwealth of Pennsylvania entered a suit seeking a declaratory judgment.

Sometime during 1983 the representatives of the parties in the McKenna case, the Catania case and the Commonwealth case engaged in settlement discussions. On June 22, 1983, the Commonwealth Court ordered that all action in the cases be continued generally pending settlement negotiations.

On December 22, 1982, an application for approval of a consent decree was presented to the Commonwealth Court. A copy of this application was not given to the class members who are petitioners herein nor were they advised of its presentation and contents.

On December 22, 1983, the Commonwealth Court entered an order with respect to notice, settlement hearing and administration. A copy of this order was not given to the class members who

are petitioners herein nor were they advised of its filing or contents.

Sometime subsequent to Christmas of 1983 but prior to January 1, 1984, McKenna class petitioners received at their chambers class counsel's letter dated Thursday, December 22, 1983 advising them, inter alia:

> "Accordingly, please forward to us any written comments that you have concerning the proposed settlement terms. We, in turn, will submit these comments to the Commonwealth Court at the hearing scheduled for Friday, January 6, 1984 at 2:00 p.m. . . . ."

In addition to the letter, petitioners received a copy of the proposed "CONSENT DECREE".

Sometime after Christmas, 1983, but prior to January 1, 1984, Catania class members received at their chambers class counsel's letter dated December 22, 1983, advising them, inter alia:

> "The criteria used by the Court in making this decision include the

> reactions of Class Members to a proposed settlement. Accordingly, we invite you to contact us with any written questions or comments about the Consent Decree within twelve (12) days of the date of this Notice. We will submit these comments to the Commonwealth Court."

In addition to the letters, petitioners received a copy of a proposed "CONSENT DECREE".

Acting in conformity with the court's approved notice by class counsel, Petitioner Smith caused to be delivered to class counsel "OBJECTIONS TO PROPOSED CONSENT DECREE". Petitioner Ridge filed his joinder in the Objections. Petitioners Watson and Ross sought but were denied leave of court to join in these objections. The objections were presented to the Commonwealth Court and, notwithstanding a specific request by petitioners that they be granted the opportunity to present argument in support thereof, the objections were dismissed out-of-hand.

On January 6, 1984, the Commonwealth Court executed its "FINAL ORDER AND JUDGMENT". In that order it approved the consent decree of which the petitioners received a copy. It then went on to approve the application the contents of which were not made known to petitioners. The Court also:

1. dismissed all claims alleged in the litigation; and,

2. entered an injunction against the class members, including the petitioners herein, as follows:

> "The prosecution in any jurisdiction by the plaintiffs, the Classes or any Class Member, or any of their heirs, executors, administrators, successors and assigns, of any claim, actions, cause of action, suits, or other matters released by paragraph 8 of the Application is hereby forever barred and enjoined."

Additionally, the court reserved jurisdiction to enforce these provisions of its order.

Petitioners received no notice of the contents of the Court's final order although they received informal notice of the entry of an order.

Petitioners Smith and Ridge on January 30, 1984, and Petitioners Watson and Ross, on February 6, 1984, filed their respective appeal as a matter of right with the Pennsylvania Supreme Court.

Following the perfecting of the appeal and in accordance with Pennsylvania Rules of Appellate Procedure 1701, petitioners filed with the Commonwealth Court their application for reconsideration. In this application they again raised federal constitutional issues.

On February 8, 1984, the Commonwealth Court entered its order denying Petitioners Smith and Ridge's application for reconsideration but in doing so they allowed them thirty (30) days in which to file an election to opt out of the McKenna case.

On February 16, 1984, the Commonwealth Court denied Petitioners Ross and Watson's motion for leave to join in objections to proposed consent decree but allowed them thirty (30) days to opt out. The respondents in the appeal before the Pennsylvania Supreme Court filed a motion to quash. The basis of respondents' motion is found in paragraphs 3 and 11 as follows:

> "3. These appeals are moot in that the four judges have already received all the relief that would be available to them on appeal.
>
> * * *
>
> 11. The Commonwealth Court's order permitting the judges to exclude themselves from the binding effect of the Consent Decree renders the judge's request on appeal that they be relieved from the effect of the decree moot."

Petitioners answered respondents' motion to quash, denied that the appeals were moot and went on to restate all of the issues presented on appeal. Without permitting petitioners the opportunity of presenting argument in support of

their answer to the motion to quash, the Pennsylvania Supreme Court, on May 22, 1984, entered an order granting the motion to quash the appeal. (App. A, infra, _____).

Petitioners filed with the Pennsylvania Supreme Court their application for reconsideration of its order quashing the appeal and requested that that order be vacated. In this motion for reconsideration the petitioners again requested the opportunity to argue their respective appeal on the merits before the Supreme Court of Pennsylvania. This motion for reconsideration was denied by order dated July 12, 1984. (App. B, infra, ____).

STAGES IN THE PROCEEDING WHERE FEDERAL CONSTITUTIONAL ISSUES WERE RAISED

I. Commonwealth Court -

A. Objections to the Proposed Consent Decree. In their objections petitioners herein objected to the entry of the consent decree on the basis that it would work a deprivation of their property contrary to the federal constitution.

B. Application for Reconsideration. In their application for reconsideration, petitioners raised the following as violations of the Fourteenth Amendment's Due Process Clause: (1) lack of an evidentiary hearing as required by state law before approval of the consent decree; (2) denial of an opportunity to present argument in support of their objections; (3) failure to give petitioners timely notice of the proceeding before the court; (4) failure to fully and adequately inform

petitioners of the true nature and full extent of the matters presented to the court for its consideration; and, (5) the entry of a decree which encompassed matters about which petitioners were not informed.

II. Pennsylvania Supreme Court -

A. Petitioners' Application for Reconsideration. In their application for reconsideration petitioners objected to the quashing of the appeal as a deprivation of their rights under the Constitution of the United States in that: (1) petitioners were denied the right to present argument in support of the appeal; (2) that they were being denied the process due them, i.e., the appeal as provided by law; (3) a judgment was entered against them without the right to a hearing; and, (4) there has been a deprivation of their property right without the opportunity to be heard, the right to present evidence, and the hope that both would be considered by the court.

REASONS FOR GRANTING THE PETITION

I.

Where, as here, the Pennsylvania Commonwealth Court exercises its original jurisdiction, any person aggrieved, such as petitioners, is granted a right of appeal to the Pennsylvania Supreme Court. This right finds its origin in the Pennsylvania Constitution1/ and is supplemented by Pennsylvania's Judicial Code2/ and

---

1/ ". . . there also shall be a right of appeal from a court of record. . . to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law." (Pa. Const., Art. V, §9).

2/ "Right to appellate review

(a) General rule. - There is a right of appeal under this subsection from the final order (including an order defined as a final order by general rule) of every:

(1) Court. . .to the court having jurisdiction of such appeals." (42 Pa. C.S.A. §5105);

(footnote continued)

the Pennsylvania Supreme Court's Rules of Appellate procedure.3/ The right of appeal is absolute and not dependent upon the exercise of any discretionary powers by Pennsylvania's Supreme Court. Once the appeal has been perfected, the

---

(footnote continued)

and,

"Appeals from Commonwealth Court

(a) General Rule. - The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the Commonwealth Court entered in any matter which was originally commenced in the Commonwealth Court except an order entered in a matter which constitutes an appeal to the Commonwealth Court from another court, a district justice or another government unit." (42 Pa. C.S.A. §723).

3/ "Any Aggrieved Party May Appeal

Except where the right of appeal is enlarged by statute, any party who is aggrieved by an appealable order, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom." (Pa.R.A.P.501).

Court's jurisdiction to act has been established by the Judicial Code.4/

It is the contention of petitioners that Pennsylvania's Constitution, its Judicial Code and the Rules of Appellate Procedure establish the process of law due petitioners who have been deprived of their property and liberty rights by the decisions of the Commonwealth Court. Petitioners also contend that the Fourteenth Amendment requires, before the deprivation based in the Commonwealth Court's decision becomes final, that they be afforded the right to an appeal.

4/ "Disposition of appeals

An appellate court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances." (42 Pa. C.S.A. §706).

This Court has held that interests protected by the Fourteenth Amendment may arise from two sources - the Due Process Clause itself and the laws of the States5/ and when a protected interest has its roots in state law the minimum procedures appropriate under the circumstances are required by the Due Process Clause to insure that the state created right is not arbitrarily abrogated.6/ Moreover, this Court has held that the touchstone of due process is protection of the individual against arbitrary action of government.7/ In the instant case the decree of the Commonwealth Court deprived petitioners of an interest in their pension, a property right, and their liberty, i.e., the injunction curtailed their constitutional right to seek redress before the courts. Under the process of law due them,

---

5/ Hewitt v. Helms, 459 U.S. 460 (1983).

6/ Meachum v. Fano, 427 U.S. 215 (1976).

7/ Wolff v. McDonnell, 418 U.S. 539 (1974).

petitioners had the right to appeal to the Pennsylvania Supreme Court to seek redress but this process was denied them when that court quashed their appeal. This, petitioners contend, is a denial of due process of law.

That the judgment of the Pennsylvania Supreme Court was arbitrary and capricious is clear from an examination of the instant record. Here, the respondents in the court below moved to quash the appeal for the reason that the petitioners could have opted out of the class action and therefore they could have relieved themselves from the onerous provisions of that court's judgment. However, even conceding arguendo that Pennsylvania has such a procedural motion where an appeal lies as a matter of right and has been perfected in time, petitioners contend that the issues raised were not moot and they sought the opportunity to present argument on this issue. This they were denied thus resulting in another denial of due process. If, in a class

action case, the class representatives after certification and many years of litigation enter into an agreement whereby they obtain the court's approval of their understanding and an order that those who do not like it can leave the case and lose their rights, then this itself would be a violation of the Due Process Clause. At the time of the class action judgment the class was closed and its membership determined since 1978 in the McKenna case and 1981 in the Catania case. The opt out time provided by Pennsylvania law had long since expired. The Commonwealth Court was without jurisdiction to grant the opt out provision.

The denial of the right to maintain the appeal was a violation of the Due Process Clause mandating the granting of the writ.

II.

It is petitioners' contention that the entry of the judgment declaring that they are indebted to the Commonwealth of Pennsylvania's

State Employees' Retirement Board without providing them due and timely notice of the pending proceeding, an opportunity to be heard and to argue their objections is a violation of the Due Process Clause.

This Court has held that the fundamental requisite of due process of law is the opportunity to be heard at a meaningful time and manner and where important decisions turn on questions of fact due process requires the opportunity to confront and cross-examine witnesses.8/ Also, due process requires at a minimum that deprivation of property by adjudication be preceded by notice, a meaningful hearing and the opportunity to be heard.9/

In the instant case petitioners contend that they did not receive timely and adequate notice of the matters pending before the court,

---

8/ Goldberg v. Kelly, 397 U.S. 254 (1970).

9/ Goss v. Lopez, 419 U.S. 565 (1975).

that they were denied the opportunity to a hearing on their objections and the right to have an adjudicative proceeding in which they could participate.

A. Notice.

In this case petitioners were advised by letter some time between Christmas and New Year's Eve of 1983 that there was to be a proceeding before the Commonwealth Court and that they should put their thoughts about this in writing and send them to class counsel on or before January 6, 1984. This short time period did not allow petitioners sufficient time in which to consider the matters presented in the letter and by the consent decree. Such short notice is, in reality, no notice at all because it does not allow petitioners time to act.

The notice was also defective because it was inadequate. The court-approved notice to members of both classes failed to inform the class

members of the matters to be considered by the court. They were not notified that the class representatives had agreed among themselves that they were to be released from liability, that the court was to enter an injunction and that they would be denied the opportunity to be heard. This is a violation of due process requirements as set forth above.

B. Hearing.

The petitioners, although they requested an opportunity to be heard on the objections to the consent decree, were denied such an opportunity. This was a denial of due process.

The lack of adequate and timely notice plus the denial of an opportunity to be heard justifies the granting of the writ.

III.

Neither in the pleadings of the cases before the court below nor in any communication to

members of the class was there any reference to releasing the class representatives, their agents, heirs, etc. from all liability or the entry of an injunction to restrain the class members from pursuing any rights that they might have against these persons and the defendants in any court. In spite of this, and without notice to the class membership of an intention to do so, the court approved the release and entered an injunction prohibiting the class members from proceeding against any of the named parties to the litigation. Moreover, the injunction was issued without giving the class members a pre- or post-injunction hearing. This conduct by the court petitioners contend is a violation of their right to due process of law under the Fourteenth Amendment because it denied them their liberty, i.e., their right to exercise their constitutional prerogatives, and their property.

CONCLUSION

The petition for writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,

Joseph H. Ridge, Pro Se

Eunice Ross, Pro Se

Ralph H. Smith, Jr., Pro Se

J. Warren Watson, Pro Se

City-County Building
Grant Street
Pittsburgh, PA 15219
(412) 355-5653

August __, 1984

APPENDIX A

"May 22, 1984. Motion to Quash Appeal granted.

By the Court:

Nix
Chief Justice"

APPENDIX B

"ORDER: July 12, 1984. Application denied.
By the Court: Nix Chief Justice"